

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDREW SCHOFIELD

Appeal No. 2001-2269
Application No. 08/680,266

ON BRIEF

Before FLEMING, RUGGIERO, and BARRY, ***Administrative Patent Judges.***

FLEMING, ***Administrative Patent Judge.***

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 19-30, all the claims pending in the instant application. Claims 1-18 have been canceled.

Invention

The invention relates to performing distributed object calls using proxies on the client side and memory allocation on the server side. Specifically, the invention involves the creation of a proxy handle data structure to be associated with a particular object and its associated object reference. On the

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client side, object calls to the associated object are then made using the proxy handle, thus allowing multiple calls to the same object and eliminating the need to perform certain initialization functions each time the call is made. On the server side, the server allocates memory in a platform-independent manner. See pages 2 and 3 of Appellant's specification.

Independent claim 19 is representative of the invention and is reproduced as follows:

19. A computer-implemented method for performing object calls from a client to a server, comprising the steps of:

obtaining an object reference, wherein an object reference uniquely identifies an instance of an object;

using the object reference to create a proxy handle data structure, wherein the proxy handle data structure comprises information about the object and calls to the object;

performing an initialization routine through the proxy handle data structure;

performing multiple calls to the object after a single performance of the initialization routine;

allocating resources after a call to the object; and

automatically deallocating at least a portion of the resources after implementation of the call to the object.

References

The references relied on by the Examiner are as follows:

Bezviner et al. (Bezviner)	5,613,148	Mar. 18, 1997 (filed Oct. 19, 1995)
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satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. **In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellant. **Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. **See also Piasecki**, 745 F.2d at 1472, 223 USPQ at 788.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and arguments." **Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." **In re Lee**, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002). With these principles in mind, we commence review of the pertinent evidence and arguments of Appellant and Examiner.

In the Examiner's rejection of claims 19-30 as being unpatentable under 35 U.S.C. § 103 over Bezviner in view of Dave

and Sturges, the Examiner relies on Sturges to teach "automatically deallocating at least a portion of the resources after implementation of the call to the object" as recited in Appellant's independent claims 19 and 27. In response, Appellant argues that Sturges does not teach "automatically deallocating" because all of the procedures disclosed in Sturges in regard to allocating memory blocks in the operating system must be requested by the requestor. See pages 7 and 8 of Appellant's brief. In addition, Appellant argues that Sturges is not directed to object oriented programming and thereby Sturges fails to teach "automatically deallocating at least a portion of the resources **after implementation of the call to the object**" as required by Appellant's claims. See page 8 of Appellant's brief.

In response, the Examiner argues that Sturges teaches dynamic memory services which include a deallocation procedure or function call. The Examiner argues that the invocation of the deallocation procedure results in the deallocation of the previously used memory resources. The Examiner points us to column 7, lines 4-17, and column 8, lines 20-67 of Sturges. The Examiner points out that "an implementation of the call to the object" can be interpreted as a creating request to the object. See pages 7 and 8 of the Examiner's answer. The Examiner also

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argues that the term "object" used in the claims is a broad term and is not limited to object oriented technology. The Examiner argues that even though the Sturges reference is not directed to object oriented programming, the broad language used in Appellant's claims does not preclude Sturges reading on the claim language. See page 8 of the Examiner's answer.

In response, Appellant points out that Sturges does not teach "automatically deallocating" as required by Appellant's claims 19-30. See page 3 of the reply brief. The Appellant further points out that the term "object" used in Appellant's claims is indeed limited to a distributed object system because of the special definitions recited in Appellant's specification. See pages 3 and 4 of Appellant's reply brief. Appellant further argues that the Examiner's interpretation of "an implementation of the call to the object" ignores the common meaning of implementation and the term's explicit definition in the specification. See page 5 of Appellant's reply brief.

As pointed out by our reviewing court, we must first determine the scope of claims 19 and 27. "[T]he name of the game is the claim." *In re Hiniker Co.*, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Claims will be given their broadest reasonable interpretation consistent with the specification, and

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limitations appearing in the specification are not to be read into the claims. *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985). Our reviewing court also states in *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) that "claims must be interpreted as broadly as their terms reasonably allow."

As our reviewing court states, "[T]he terms used in the claims bear a 'heavy presumption' that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." *Tex. Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1201-02, 64 USPQ2d 1812, 1818 (Fed. Cir. 2002). "Moreover, the intrinsic record also must be examined in every case to determine whether the presumption of ordinary and customary meaning is rebutted." (citation omitted). "Indeed, the intrinsic record may show that the specification uses the words in a manner clearly inconsistent with the ordinary meaning reflected, for example, in a dictionary definition. In such a case, the inconsistent dictionary definition must be rejected." *Tex. Digital Sys., Inc.* 308 F.3d at 1204, 64 USPQ2d at 1819 (Fed. Cir. 2002). ("[A] common meaning, such as one expressed in a relevant dictionary, that

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flies in the face of the patent disclosure is undeserving of fealty."); *Tex. Digital Sys., Inc.* 308 F.3d at 1204, 64 USPQ2d at 1819 (citing *Liebscher v. Boothroyd*, 258 F.2d 948, 951, 119 USPQ 133, 135 (CCPA 1958). ("Indiscriminate reliance on definitions found in dictionaries can often produce absurd results."). "In short, the presumption in favor of a dictionary definition will be overcome where the patentee, acting as his or her own lexicographer, has clearly set forth an explicit definition of the term different from its ordinary meaning." *Id.* at 1204, 64 USPQ2d at 1819. "Further, the presumption also will be rebutted if the inventor has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." *Id.* at 1204, 64 USPQ2d at 1819.

Upon our review of the Appellant's references to the definition provided in the specification, we find that the Examiner has not interpreted the claimed terms properly. In particular, we find that the term "object" is directed to object oriented characteristics of a distributed object system. Furthermore, we find that the Examiner has not properly interpreted the language "implementation of the call to the object" as per the definition provided in Appellant's

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specification, page 3, and referred to on page 5 of the reply brief. We agree with the Appellant that the request to the object is distinct from implementation after the server application receives the request and the request is carried through an implementation. Therefore, we do not agree with the Examiner's argument that "an implementation of the call to the object" can be interpreted as creating a request to the object.

Upon our review of Sturges, we find that Sturges is not directed to distributed object programming but instead is directed to a dynamic memory management using an operating system which is not object oriented. Furthermore, we fail to find any teaching in Sturges of automatically deallocating at least a portion of the resources after implementation of a call to an object as recited in Appellant's claims 19-30.

In view of the foregoing, we have not sustained the Examiner's rejection of claims 19-30 under 35 U.S.C. § 103.

REVERSED

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